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No. 90-1676

Supreme Court, U.S.
FILED
JUN 13 1991
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1990

MARY GADE, Director of the Illinois Environmental Protection Agency,

Petitioner,

v.

NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

I. REVIEW OF THE DECISION OF THE SEVENTH CIRCUIT IS APPROPRIATE AT THIS TIME.

NSWMA's contention that review of this case by this Court would be more appropriate at some future time is disingenuous. The central issue in this case is whether Illinois' Licensing Acts, which serve the dual purpose of protecting public safety and worker safety, are preempted by Section 18 of the OSH Act. The Seventh Circuit decided this issue holding that any statute serving such a dual purpose must be stricken. Specifically, the Court decided:

> We must decide, therefore, whether the mere assertion of a concurrent public health purpose can save Illinois' regulation of hazardous waste workers from preemption. We conclude that it cannot.

(Petition App. 18).

The Seventh Circuit determined that the worker health and safety aspect of many of the provisions of the Illinois Licensing Acts could not be disengaged from the public safety aspects. The Court explained:

> The problem is that many (if not most) of the provisions of the Illinois statutes address both worker health and public health simultaneously and through direct regulation of hazardous waste workers. It is impossible in reviewing some of the statutes' provisions to disengage the public health interest from the worker health interest.

(Petition App. 18). For this reason, the Court struck the Illinois regulation.

The Seventh Circuit's decision on the central issue of this case will not be affected by any further rulings by the District Court. No purpose will be served by delaying this Court's consideration of this important question.

II. THIS COURT HAS JURISDICTION TO GRANT THIS PETITION FOR WRIT OF CERTIORARI.

NSWMA also contends that the decision of the Seventh Circuit to remand this case to the District Court is fatal to this petition for writ of certiorari. (Brief For Respondent In Opposition, p. 7). Respondent's argument is at odds with the plain language of the Judicial Code which provides in pertinent part:

> § 1254 Courts of appeals; certiorari; appeal; certified questions.
>
> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree;

28 U.S.C. § 1254(1). The Judicial Code provides no limitation on this Court's authority to review the decision of the Seventh Circuit pursuant to this petition for writ of certiorari.

This Court has not hesitated to grant writs of certiorari to review decisions of the courts of appeals which were remanded for further proceedings. In *Thornburgh v. American College of Obstetricians*, 476 U.S. 747 (1986), this

Court determined that it did not have appellate jurisdiction because of the non-final nature of the judgment of the appellate court. Nevertheless, this Court went on to accept the appellants' jurisdictional statement as a petition for certiorari and to consider the merits of the case. *Id.* at 754-755. See also *Doran v. Salem Inn, Inc.*, 422 U.S. 911, 927 (1975), and *El Paso v. Simmons*, 379 U.S. 497, 502-503 (1965). This Court's jurisdiction to grant this petition for a writ of certiorari is clear.

CONCLUSION

For the reasons stated above and in the Petition, Petitioner respectfully requests that this Honorable Court grant this petition for writ of certiorari.

Respectfully submitted,

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June 13, 1991